

SC CIRCULAR NO. 17-95, March 23, 1995

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OFFICE OF THE COURT ADMINISTRATOR

TO :

THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARI 'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI 'A CIRCUIT COURTS OF THE PHILIPPINES

SUBJECT:

A. M. NO. MTJ-93-874

AUGUSTUS L. MONONGAN, Complainant vs. JUDGE RAFAEL B. OMIPON, 6th MCTC: Hinunangan-Silago, Southern Leyte, Respondent

Quoted hereunder for the information and guidance of all concerned is the pertinent portion of the decision of the Third Division in A. M. No. MTJ-93-874 (AUGUSTUS L. MOMONGAN, Petitioner versus JUDGE RAFAEL B. OMIPON, Respondent), dated March 14, 1995, to wit:

"A. M. No. MTJ-93-874, (AUGUSTUS L. MOMONGAN, Petitioner versus JUDGE RAFAEL B. OMIPON, Respondent),

"xxx

xxx

xxx

xxx

"Complaint is correct in pointing out that based on Pres. Decree No. 705, Sec. 68-A and Adm. Order No. 59, the DENR Secretary if his duly authorized representative has the power to confiscate any illegally obtained or gathered forest products and all conveyances used in the commission of the offense and the dispose of the same in accordance with pertinent laws. However, as complainant himself likewise pointed out, this power is in relation to the administrative jurisdiction of the DENR.

"We do not find that when respondent Judge released the truck after he conducted the preliminary investigation and satisfied himself that there was no reason to continue keeping the truck, he violated Pres. Decree No. 705 and Adm. Order No. 59. The reason of the truck did not render nugatory the administrative authority of the DENR Secretary. The confiscation proceeding under Adm. Order No. 59 is different from the confiscation

under the Revised Penal Code, which is an additional penalty imposed in the event of conviction. Despite the order of release, the truck can be seized again either by filing a motion for reinvestigation and motion to include the truck owner/driver as co-accused, which complaint has done as manifested before the lower court by enforcing Adm. Order No. 59, Section 12 thereof categorically states that [t]he confiscation of the conveyance under these regulations shall be without prejudice to any criminal action which shall be filed against the owner thereof or any person who used the conveyance in the commission of the offense.

"Petitioner is of the opinion that under the circumstances, respondent Judge should have turned over the truck to the Community Environment and Natural Resources Office (CENRO) of San Juan, Southern Leyte for appropriate disposition. No doubt, this would have simplified matters and prevented the present situation from occurring.

6. SEC. 7. NOTICE TO OWNER. For the purpose of complying with due process, the Secretary, DENR/CENRO or their duly authorized representative shall give him a written notice of the seizure and shall give him an opportunity to be heard in reference to the ground or reason for the seizure by requiring said owner or representative to submit sworn statements or affidavit within three (3) days from receipt of such written notice or they may elect to have a formal hearing conducted, but they must signify their intention in writing within the same period. For the purpose of such notice and all proceedings connected with confiscation, "representative" shall be deemed to include not only representative-in-fact of the owner but also any person having possession of the conveyance at the time of confiscation of seizure.

SEC. 8. REPORT/RECOMMENDATION. Upon receipt of the aforesaid sworn statement/affidavit of the owner or representative or if none is received despite due notice, the DENR/CENRO or any authorized representative of the DENR for the matter shall determine if the seized conveyance was used in the commission of the offense as contemplated in Section 2 hereof, and shall render a report thereon within one week accompanied by the evidence he has gathered including his recommendations to the Secretary of the Regional Executive Directors, as the case may be wherein one government official files a complaint against another. Under Sec. 4 of Adm. Order No. 59. If the apprehension is not made by DENR field offices, deputized military personnel and officials of other agencies apprehending illegal logs and other forest products and their conveyances shall notify the nearest DENR field offices and turn over said forest products and conveyances for proper action and disposition. A period of about two weeks lapsed from the time the seizure was made before a complaint was filed. During this period, the apprehending policemen had enough time to turn over the logs and the truck to the nearest DENR field office for proper action and disposition since the duty to turn over the truck to the nearest DENR field officer rests on the official apprehending the illegal logs. There being no mandatory duty of the part of respondent Judge to turn over the truck, he should not be visited with disciplinary sanction when he did not refer the same to the DENR field office in San Juan, Southern Leyte."

March 23, 1995.

(SGD.) ERNANI CRUZ PANO

Court Administrator

Continued . .

SEC. 9. DISPOSITION OF CONVEYANCE. All conveyances found to have been used in the transport of any forest product from illegal sources and/or covered by spurious documents shall be declared forfeited in favor of the government in accordance with Sec. 68-A of PD 705, as amended, Forfeited conveyances may be used, at the discretion of the DENR, in forest protection and development activities, otherwise, the same shall be disposed of through public auction by the Secretary of the Regional Office, as the case may be, in accordance with existing policies and procedures for the disposition of government property.

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